SUPREME COURT OF THE UNITED STATES

DOUGLAS VINCENT METHENY *v.* M. C. HAMBY, WARDEN, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 87-6703. Decided October 17, 1988

The petition for a writ of certiorari is denied.

JUSTICE WHITE, dissenting.

This case, and one other on which the Court denies certiorari today—*Bryant* v. *United States*, No. 87-7322—present the question of whether violations of the Interstate Agreement on Detainers (IAD) are cognizable in Federal habeas corpus proceedings.

I

The IAD question is one that has divided the Courts of Appeals. Most of the Circuits have held that violations of the IAD, without more, do not make out a claim for relief under either 28 U. S. C. § 2254 or § 2255.[1] In this case, the Sixth Circuit found that petitioner could not obtain habeas relief for an IAD violation in a proceeding brought under 28 U. S. C. § 2254; in the other case disposed of today, *Bryant*, *supra*, the Fourth Circuit reached a similar conclusion with respect to a § 2255 action. This majority position among the Courts of Appeals, however, has been rejected by at least two Cir-

[1] The majority rule, holding that IAD violations, without more, do not state a claim for habeas relief, has been adopted by the Fourth and Sixth Circuits (as illustrated by these two cases) as well as the First Circuit, *Fasano* v. *Hall*, 615 F. 2d 555, 558 (CA1), cert. denied, 449 U. S. 867 (1980); the Second, *Edwards* v. *United States*, 564 F. 2d 652, 654 (CA2 1977); the Eighth, *Shigemura* v. *United States*, 726 F. 2d 380, 381 (CA8 1984); the Tenth, *Greathouse* v. *United States*, 655 F. 2d 1032, 1034 (CA10 1981), cert. denied, 455 U. S. 926 (1982); and the Eleventh, *Seymore* v. *United States*, 846 F. 2d 1355, 1356–1357 (CA11 1988).

cuits, with a third also somewhat in disagreement.[2] This issue has been presented to the Court for its consideration on several occasions in the past; the Court has, unfortunately, refused to resolve this persistent conflict among the lower federal courts. See, *e. g.*, *Haskins* v. *Virginia*, —— U. S. —— (1988) (WHITE, J., dissenting); *Kerr* v. *Finkbeiner*, 474 U. S. 929 (1985) (WHITE, J., dissenting).

Once again, I dissent from this Court's denial of review on this question. There is nothing to commend having habeas corpus available in some circuits and not in others. I would grant certiorari in this case to resolve the split of authority among the Courts of Appeals.

II

These two IAD cases, however, are not the only two presenting conflicts among the courts over the interpretation of Federal statutes (or Constitutional provisions), on which the Court has denied review already this Term. In fourteen other cases this Term, the Court has declined to review judgments which created or exacerbated existing splits in authority among the State and/or Federal courts. See, *e. g.*, *Texas* v. *Modgling*, No. 87–1565; *Boyle* v. *Illinois*, No. 87–1649; *Lauriten, et ux.* v. *McLaughlin*, No. 87–1853; *Cleveland Newspaper Guild* v. *Plain Dealer Pub. Co.*, No. 87–1864; *Hartenstine* v. *Superior Court*, No. 87–1877; *Young* v. *Langley*, No. 87–1907; *Kahn* v. *Avnet*, No. 87–2037; *Feaster* v. *United States*, No. 87–2047; *Gruenholz* v. *United States*, No. 87–7111; *Union Pacific Railroad* v. *Moritz*, No. 88–93; *Kreisher* v. *Mobile Oil Corp.*, No. 88–195; *Robinson* v.

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[2] The Seventh Circuit has held that violations of the IAD are cognizable in federal habeas proceedings, *Webb* v. *Keohane*, 804 F. 2d 413, 414 (CA7 1986), as has the Third Circuit, *United States* v. *Williams*, 615 F. 2d 585, 590–591 (CA3 1980). The Ninth Circuit has found that certain IAD violations are cognizable in federal habeas, while others are not. *Compare Carlson* v. *Hong*, 707 F. 2d 367, 368 (CA9 1983) *with Cody* v. *Morris*, 623 F. 2d 101, 102 (CA9 1980).

Connecticut, No. 88–338; *Stamler* v. *Zamboni*, No. 88–339; *Torres-Arboledo* v. *Florida*, No. 88–5135.

I noted my dissent from the denial of review in all of these cases. Most of them present questions of the proper interpretation of federal statutes, a few involve questions of Constitutional interpretation. These questions concern issues that have divided the Courts of Appeals (or, in some instances, the State courts), and require our attention when it is so apparent that some persons are being protected or being sanctioned by the Federal law and others are not.

I also note that, the Court granted certiorari (or noted probable jurisdiction) so far this Term in at least twelve cases which, like these, raise questions of federal statutory interpretation that had divided the lower courts. See, *e. g.*, *Lorance* v. *AT&T Tech., et al.*, No. 87–1428; *Texas State Teachers Assn.* v. *Garland Ind. Sch. Dist.*, No. 87–1759; *California* v. *ARC Am. Corp.*, No. 87–1862; *FSLIC* v. *Ticktin*, No. 87–1865; *Mead Corp.* v. *Tilley*, No. 87–1868; *Neitzke* v. *Williams*, No. 87–1882; *Finley* v. *United States*, No. 87–1973; *Hardin* v. *Straub*, No. 87–7023; *Lauro Lines S. R. L.* v. *Chasser, et al.*, No. 88–23; *Massachusetts* v. *Morash*, No. 88–32; *Missouri, et al.* v. *Jenkins, et al.*, No. 88–64; *Duckworth* v. *Eagan*, No. 88–317. It is not immediately apparent to me—as it must not be to litigants in the cases in which certiorari was denied, or to judges in the Federal and State court systems—why the Court granted certiorari in these twelve cases, but not in the previously listed sixteen in which I have dissented or am dissenting from the denial of review.

This is not to say that review should not have been granted in the twelve cases that will be reviewed. To the contrary: where cases present issues over which the Federal and State courts have divided, this Court has a special obligation to intercede and provide some definitive resolution of the issues. Cf. Sup. Ct. R. 17. Rather, my point is that this Court is only fulfilling this role with respect to some of the cases

brought here on review, and not others—and the method by which it distinguishes between the two is elusive, to say the least. This is the principal reason why I have dissented from so many of the Court's decisions to deny certiorari in the past: almost 200 times in the past three Terms.

As I see it, the reason the Court grants review in some of these cases but does not do so in many others, is the limitation placed on the Court's docket by its resources: its finite ability to hear arguments and issue decisions in only a given number of cases in each Term. The Court would rather give prompt attention to all cases in which it grants review than grant a larger number of cases in any Term than it can hear in a single Term, for to do the latter would necessarily afford only delayed review in every case in which plenary consideration is granted. That may well be a justifiable course of action, but it does tend to conceal the fact that many cases that deserve review are being denied.

It is also clear that, so far this Term, the Court has limited its argument intake to a modest number. In our first two Conferences this Term, we denied review in 1,077 cases, and granted review in 32.[3] We thus granted review in 2.8% of the petitions acted upon. Should we continue to grant review at this rate for the rest of the term, and if the applications for review acted upon this term total 4,650 (3% more than last term), we will have granted only 130 cases—considerably less than the 170 cases we have been deciding each Term (which would likely be disposed of in approximately 150 hours of argument time and 150 opinions).

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[3] Of the cases in which review was denied, 463 were "paid" cases while 614 were brought "*in forma pauperis*." Among the granted cases, 29 were "paid" and 3 were "IFP."